



January 17, 2006

YR2006-1NA

Dear *Name**,

This is in further response to your inquiries about the May 25, 2005 enforcement position adopted by the Wage and Hour Division (WHD) regarding the employment of 15-year-olds as lifeguards at swimming pools and water amusement parks. I appreciate the cooperation you and your colleagues have extended to the WHD staff.

The WHD, part of the U. S. Department of Labor's Employment Standards Administration, is responsible for administering the Fair Labor Standards Act (FLSA). The FLSA is the federal law of most general application concerning wages, hours of work and youth employment. The youth employment provisions were enacted to ensure that when young people work, the work is safe, age-appropriate, and does not jeopardize their health, well-being, or schooling.

In defining "oppressive child labor," FLSA section 3(l) expressly prohibits children under the age of 16 from performing any work other than that which the Secretary of Labor permits, by order or regulation, because it does not interfere with their schooling or health and well-being (see 29 U.S.C. 203(l)). The Secretary's declaration of what forms of labor are not deemed "oppressive" for children between the ages of 14 and 16 appears in Child Labor Regulation No. 3 (Reg. 3), 29 C.F.R. §§ 570.31-.38. Copies of the FLSA and Regulations, 29 C.F.R. part 570, are enclosed for your convenience.

Reg. 3 also identifies a number of occupations or activities which are specifically prohibited for youth between the ages of 14 and 16 without regard to the industry or the type of business in which their employer is engaged (e.g., "operation or tending.... of any power-driven machinery other than office machines") (see 29 C.F.R. § 570.33). This section of Reg. 3 incorporates by reference all of the prohibitions contained in the Hazardous Occupations Orders (see 29 C.F.R. §§ 570.50-.68) that identify occupations that are "particularly hazardous" and, therefore, are banned for 16- and 17-year-olds (e.g., occupations involved in the operation of power-driven metal forming, punching and shearing machines) (see 29 C.F.R. § 570.33(e)). Further, Reg. 3 includes special rules for youth engaged in retail, food service, and gasoline service establishments – expressly authorizing certain activities (see § 570.34(a)) and expressly prohibiting others (see § 570.34(b)). For example, clerical work, cashiering and clean-up work are authorized, but "all work requiring the use of ladders, scaffolds, or their substitutes" is prohibited. These special rules apply only in the designated types of business.

The occupation of "lifeguard" is not specifically authorized in Reg. 3 as an occupation that 14- and 15-year-olds may perform. Therefore, a strict interpretation of the statute and Reg. 3 could prohibit any employee under age 16 from working as a lifeguard. In fact, the WHD enforced such an interpretation until August of 2000. At that time, a local chapter of the American Red Cross contacted the WHD to inquire whether 15-year-olds could legally be employed as lifeguards under the youth employment provisions of the FLSA. The WHD responded that, although Reg. 3 does not specifically permit such employment, it would not assert, as a matter of its discretion, a violation of the youth employment provisions with regard to the employment of a 15-year-old in the occupation of lifeguard *provided that* the minor was trained and certified by the American Red Cross in aquatics and water safety. That letter also detailed certain activities that a young lifeguard may or may not perform and stated that the WHD would enforce all the other applicable provisions of Reg. 3.

In 2003, a city government contacted the WHD to ask whether this limited enforcement position applied to pools operated by state and local governments. The WHD, in a letter dated September 2, 2003 (copy enclosed), amended the August 2000 enforcement position by expressly including swimming pools owned and operated by state and local governments. In addition, the WHD



clarified the conditions of the enforcement position, identifying the tasks 15-year-old lifeguards may or may not perform. In May of 2005, upon consideration of the points raised by your organization and others, the WHD again clarified its limited enforcement position and applied it to both private and publicly owned/operated swimming pools and water amusement parks under certain conditions.

Upon further consideration of the information provided, and after site visits by WHD staff, it is necessary to further clarify our enforcement position and amend it to permit the employment of 15-year-olds as lifeguards at swimming pools and water amusement parks under the conditions described below.

The WHD, as a matter of discretion, will not assert a violation with regard to the employment of a 15-year-old in the occupation of "lifeguard" at a traditional swimming pool and at most facilities of a water amusement park *provided that* the minor has been trained and certified by the American Red Cross or a similarly recognized certifying organization. The occupation of lifeguard, as used in this enforcement position, encompasses the duties of rescuing swimmers in danger of drowning, the monitoring of activities at a swimming pool to prevent accidents, the teaching of water safety, and providing assistance to patrons. Lifeguards may also help to maintain order and cleanliness in the pool and pool areas, give swimming instructions, conduct or officiate at swimming meets, and administer first aid. Additional ancillary lifeguard duties may include checking in and out such items as towels, rings, watches and apparel. Properly certified 15-year-old lifeguards are also permitted to use a ladder to access and descend from the lifeguard chair; use hand tools to clean the pool and pool area; and test and record water quality for temperature and/or pH levels, using all of the tools of the testing process including adding chemicals to the test water sample. Such youth, however, would be prohibited from entering or working in any chemical storage areas, including any areas where the filtration and chlorinating systems are housed. The other provisions of Reg. 3, including the restrictions on hours of work contained at § 570.35(a), would continue to apply to the employment of 15-year-old lifeguards.

A traditional swimming pool, for purposes of this enforcement position, means a water-tight structure of concrete, masonry, or other approved materials located either indoors or outdoors, used for bathing or swimming and filled with a filtered and disinfected water supply, together with buildings, appurtenances and equipment used in connection therewith. A water amusement park means an establishment that not only encompasses the features of a traditional swimming pool, but also includes additional attractions such as wave pools; lazy rivers; specialized activities areas such as baby pools, waterfalls, and sprinklers; and elevated water slides. Properly certified 15-year-olds would be permitted to be employed as lifeguards at these water amusement park features, except as noted below. Not included in the definition of a traditional swimming pool or a water amusement park would be such natural environment swimming facilities as rivers, streams, lakes, reservoirs, wharfs, piers, canals, or oceanside beaches at which WHD will continue to enforce a minimum age of 16 years for the employment of lifeguards.

It is important to note that § 570.33(b) prohibits the employment of 14- and 15-year-olds in occupations involving the operation or tending of power-driven machinery, except office machines. This prohibition has always encompassed the operation or tending of all power-driven amusement park and recreation establishment rides – including elevated slides found at water amusement parks. Such slides, which often reach heights of over 40 feet, rely on power-driven machinery that pump water to the top of the slides which facilitates the descents of the riders to the "splash-down" area at the base of the slides. Minors less than 16 years of age may not be employed as *dispatchers* or *attendants* at the top of elevated water slides – employees who maintain order, direct patrons as to when to depart the top of the slide, and ensure that patrons have safely begun their ride – because such work constitutes "tending" as used in Reg. 3. Accordingly, even if 15-year-old minors have been properly certified as lifeguards, they may not be employed as dispatchers, attendants, or in similar positions at the top of an elevated water slide. Properly



certified 15-year-old lifeguards, however, may be stationed at the “splashdown pools” located at the bottom of the elevated water slides to perform traditional lifeguard duties.

Finally, we note that all states have their own youth employment provisions and may not recognize this federal limited enforcement position. When state provisions differ from the federal provisions, employers are held to the more stringent standard. For information about the youth employment provisions established by a specific state, you may wish to contact the office in that state responsible for administering youth employment provisions. The following Web site can help you identify the appropriate state office: www.dol.gov/esa/contacts/state_of.htm.

We trust that you and your colleagues will find this information helpful. Please note that in addition to the materials we have enclosed with this letter, a wealth of compliance assistance information is available on the Department of Labor’s **YouthRules!** Web site located at www.youthrules.dol.gov.

Sincerely,

Michael F. Ginley
Director
Office of Enforcement Policy

Enclosures

** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7)*